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Third Party Communication: None  
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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

In Re:

Refer Reply To:  
CC:PSI:B04  
PLR-132403-13  
Date:  
January 15, 2014

Taxpayer	=
Spouse	=
Son	=
Granddaughter	=
Trust	=

Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	

This letter responds to your authorized representative's letter of June 26, 2013, and subsequent correspondence, requesting a ruling under § 2642(c) of the Internal Revenue Code.

Article III, paragraph 1 of Trust provides that the trustee is to notify the Trust beneficiaries within seven days of receipt of any property that they have an unrestricted right for a period of 30 days from the date of notification to demand, in writing, and immediately receive, the property contributed to Trust. The demand right is non-cumulative from year to year and is limited in any one calendar year to the lesser of (a) an amount equal to the maximum annual gift tax exclusion allowable under § 2503(b),

or (b) the amount the transferor of the property designates as being subject to demand, or in the absence of such designation, the amount arrived at by dividing the total amount of the property received in that calendar year by the total number of beneficiaries having demand rights.

Article III, paragraph 2 provides that the beneficiaries of Trust are limited to Taxpayer's Son, Granddaughter, and Taxpayer's then living great-grandchildren. This paragraph further provides that if any property is added to Trust, the transferor, in the instrument of transfer, may specify and designate the beneficiary or beneficiaries who are entitled to demand and receive property transferred to Trust.

Article III, paragraph 6 provides that the trustee is to distribute to each great-grandchild net income from her trust share necessary to provide for that great-grandchild's care, health, support, maintenance, and education. Any unpaid income is to be added to principal. When each great-grandchild attains age 25, the trustee is to terminate that great-grandchild's trust share and distribute its assets to that great-grandchild. If the great-grandchild dies before attaining age 25, the trustee is to distribute the assets of her trust share to that great-grandchild's estate.

In Years 1 and 2, Taxpayer made gifts of stock to the separate trust shares established for eight of her great-grandchildren. In Years 3 and 4, Taxpayer made gifts of stock to the separate trust shares established for ten of her great-grandchildren. It has been represented that Taxpayer never made gifts to the separate trust shares established for Son and Granddaughter and that Son and Granddaughter never received distributions from Trust.

In Years 1 through 4, on their timely filed Forms 709, Taxpayer and Spouse elected under § 2513 to treat gifts made by either as made one-half by each of them. Taxpayer and Spouse reported the transfers to Trust on these forms as direct skips and did not allocate GST exemption to these transfers. Once split, Taxpayer's reported value of each transfer was below the § 2503(b) amount for each year in question. It has been represented that Taxpayer and Spouse did not make gifts to the great-grandchildren receiving gifts in Years 1 through 4 which exceeded the yearly § 2503(b) amount.

The trust shares for Son and Granddaughter terminated in Year 5 and the trust shares for Taxpayer's great-grandchildren terminated in Year 6. It has been represented that, upon termination, Son and Granddaughter did not receive any property from Trust.

Taxpayer is requesting a ruling that her transfers to Trust qualified under § 2642(c).

Law and Analysis:

Section 2501(a) imposes a gift tax for each calendar year on the transfer of property by gift during the year by an individual.

Section 2503(b) (in effect in Year 1) provides that in the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person is not, for purposes of § 2503(a), included in the total amount of gifts made during such year.

Section 2503(b)(1) (in effect in Years 2 through 4) provides that in the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person is not, for purposes of § 2503(a), included in the total amount of gifts made during such year.

Section 2503(b)(2) (in effect in Years 2 through 4) provides that in the case of gifts made in a calendar year after 1998, the \$10,000 amount contained in § 2503(b)(1) is to be increased by an amount equal to -- (A) \$10,000, multiplied by (B) the cost-of-living adjustment determined under § 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof. If any amount as adjusted under the preceding sentence is not a multiple of \$1,000, such amount is to be rounded to the next lowest multiple of \$1,000.

Section 2513(a) provides that a gift made by one spouse to any person other than his spouse is considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States and if both spouses have signified (under the regulations provided for in § 2513(b)) their consent.

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(c)(1) defines the term "direct skip" as a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) defines the term "skip person" as -- (1) a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor, or (2) a trust -- (A) if all interests in such trust are held by skip persons, or (B) if -- (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be

made from such trust to a nonskip person.

Section 2613(b) defines the term “non-skip person” as any person who is not a skip person.

Section 2642(c)(1) provides that in the case of a direct skip which is a nontaxable gift, the inclusion ratio is zero.

Section 2642(c)(2) provides that § 2642(c)(1) does not apply to any transfer to a trust for the benefit of an individual unless -- (A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and (B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Section 2642(c)(3) provides that the term “nontaxable gift” means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of -- (A) § 2503(b) (taking into account the application of § 2513), or (B) § 2503(e).

Section 26.2642-1(c)(3) of the Generation-Skipping Transfer Tax Regulations provides generally that, for purposes of chapter 13, a transfer is a nontaxable gift to the extent the transfer is excluded from taxable gifts by reason of § 2503(b) (after application of § 2513) or § 2503(e). However, a transfer to a trust for the benefit of an individual is not a nontaxable gift for purposes of this section unless -- (i) trust principal or income may, during the individual’s lifetime, be distributed only to or for the benefit of the individual; and (ii) the assets of the trust will be includible in the gross estate of the individual if the individual dies before the trust terminates.

Section 2652(a)(1)(B) provides that, except as provided in this subsection or § 2653(a), the term “transferor” means the donor, in the case of any property subject to the tax imposed by chapter 12. An individual is treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of the gift is treated as made by the spouse of such individual, such gift is to be so treated for purposes of the GST tax.

Section 2654(b)(2) provides that for purposes of chapter 13 substantially separate and independent shares of different beneficiaries in a trust are treated as separate trusts.

Section 26.2654-1(a)(1)(i) provides that if a single trust consists solely of substantially separate and independent shares for different beneficiaries, the share

attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of chapter 13.

Section 26.2654-1(a)(5), Example 1 provides as follows. T transfers \$100,000 to a trust under which income is to be paid in equal shares for 10 years to T's child, C, and T's grandchild, GC (or their respective estates). The trust does not permit distributions of principal during the term of the trust. At the end of the 10-year term, the trust principal is to be distributed to C and GC in equal shares. The shares of C and GC in the trust are separate and independent and, therefore, are treated as separate trusts. The result would not be the same if the trust permitted distributions of principal unless the distributions could only be made from a one-half separate share of the initial trust principal and the distributee's future rights with respect to the trust are correspondingly reduced. T may allocate part of T's GST exemption under § 2632(a) to the share held for the benefit of GC.

In this case the terms of Trust provide for separate trust shares for each beneficiary of Trust. Article III, paragraph 6 provides that during the life of each great-grandchild no portion of the corpus or income of that great-grandchild's separate trust share can be distributed to (or for the benefit of) any other person and the assets of that great-grandchild's trust share are includible in her gross estate if she dies before her trust share terminates. Taxpayer made gifts only to the trust shares established for her great-grandchildren. Taxpayer did not make gifts to the trust shares established for Son and Granddaughter. Accordingly, based upon the facts submitted and the representations made, we conclude that Taxpayer's gifts in Years 1 through 4 to the separate shares established for each of Taxpayer's great-grandchildren under Trust qualified under § 2642(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures:  
Copy for section 6110 purposes

cc: